

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

NOV 14 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JAMES RENARD REED, III,

Appellant.

2 CA-CR 2008-0027
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20060324

Honorable Gus Aragón, Judge

AFFIRMED IN PART; REVERSED IN PART AND REMANDED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra

Tucson
Attorneys for Appellee

David Alan Darby

Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial conducted in his absence, appellant James Reed, III was convicted of trafficking in stolen property. The trial court suspended the imposition of sentence, imposed a term of intensive probation plus a sixty-day jail term, and ordered Reed

to pay \$34,544 in restitution. On appeal, Reed does not challenge his conviction, but he contends the amount of restitution ordered is unsupported by the record and exceeds the victim's loss actually attributable to his offense. The state agrees, and both parties ask us to remand this case for a redetermination of the appropriate amount of restitution.

¶2 A court “shall require [a] convicted person to make restitution to the person who is the victim of the [defendant’s] crime . . . in the full amount of the economic loss as determined by the court.” A.R.S. § 13-603(C). “A trial court has discretion to set the amount of restitution according to the facts” of the case. *State v. Reynolds*, 171 Ariz. 678, 681, 832 P.2d 695, 698 (App. 1992). However, a restitution award “must ‘bear . . . a reasonable relationship to the victim’s loss.’” *Id.*, quoting *State v. Scroggins*, 168 Ariz. 8, 9, 810 P.2d 631, 632 (App. 1991) (alteration in *Reynolds*). “[T]he loss must be one that the victim would not have incurred but for the defendant’s criminal offense,” and “[i]f the loss results from the concurrence of some causal event other than the defendant’s criminal conduct, the loss is indirect and consequential and cannot qualify for restitution under Arizona’s statutes.” *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002).

¶3 In this case, it is undisputed that Reed’s conviction was based on his having pawned a single item, a computer that he admitted to police he knew was stolen but denied stealing. At sentencing, defense counsel pointed out what he thought was perhaps a typographical error in the victim information section of the presentence report, which showed the victim had “submitted an affidavit requesting \$34,544 for a computer that was sold at a pawn shop essentially.” Counsel stated he did not have a copy of the affidavit, but he could not “imagine that the computer cost that much money.”

¶4 The affidavit does not appear in the record but, at sentencing, the prosecutor described it as stating that numerous items, including the computer, had been stolen during a burglary of the victim’s home. She speculated about how the victim “might” have suffered “this kind of damage,” stating: “There might have been damage to the doors or the security of the home that might have needed repairing, other items needing repair, that kind of thing.” But she offered no proof of the victim’s actual loss attributable to Reed’s offense, and she suggested it “might be appropriate” to allow Reed to contest the amount of restitution after she “ma[d]e a copy of the restitution affidavit available to [defense] counsel.” The trial court, however, ordered Reed pay \$34,544 in restitution.

¶5 The state offered no proof of the actual loss to the victim attributable to Reed’s offense. For this reason, and because the amount of restitution sought suggests that the victim had itemized some losses not attributable to Reed’s trafficking of the computer, we agree with both parties that the trial court abused its discretion in imposing the amount of restitution it ordered. Although we affirm Reed’s conviction, we vacate the restitution order and remand this matter for further proceedings consistent with this decision.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge